

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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CONFIRM

Docket No. MC2002-1

NOTICE OF UNITED STATES POSTAL SERVICE
OF DECISION OF THE GOVERNORS

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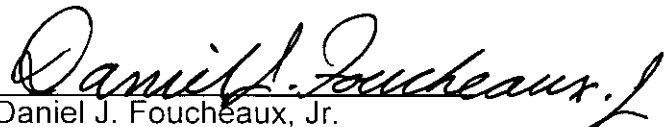
Docket No. MC2002-1:

Decision of the Governors of the United States Postal Service on the
Recommended Decision of the Postal Rate Commission Approving
Stipulation and Agreement for Confirm, Docket No. MC2002-1
(August 5, 2002)

Respectfully submitted,

UNITED STATES POSTAL SERVICE

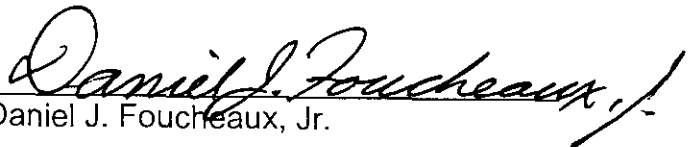
By its attorney:


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August 7, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.


Daniel J. Foucheaux, Jr.

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August 7, 2002

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE
ON THE RECOMMENDED DECISION OF THE POSTAL RATE COMMISSION
APPROVING STIPULATION AND AGREEMENT FOR CONFIRM, DOCKET NO. MC2002-1**

August 5, 2002

STATEMENT OF EXPLANATION AND JUSTIFICATION

On July 26, 2002, the Postal Rate Commission issued its Recommended Decision in Docket No. MC2002-1.¹ The Commission recommended that the Postal Service's proposal for Confirm be established as a permanent special service. Confirm employs barcode technology that enables subscribing mailers to track the processing of automation-compatible letter- and flat-sized mail. With the exception of certain modifications to the proposed Domestic Mail Classification Schedule (DMCS) language, the Commission approved a Stipulation and Agreement signed by nearly all participants in the proceeding.²

The Governors have concluded that the Commission's recommendations will establish fair and equitable fees, and a fair and equitable classification, and are in accord with the policies of the Postal Reorganization Act. As provided under 39 U.S.C. § 3625(c)(2), we approve the Recommended Decision. By resolution, the Board of Governors has today set September 22, 2002, as the effective date for the pertinent classification and fees.

The settlement agreement concluded by the parties and approved by the Commission substantially facilitated review and significantly shortened the proceedings. The novel proposal for Confirm could have resulted in extensive litigation. Instead, a spirit of teamwork prevailed and a speedy resolution was reached. The Governors sincerely hope that this collaborative effort will continue in future cases.

¹ Opinion and Recommended Decision Approving Stipulation and Agreement, Docket No. MC2002-1 (July 26, 2002).

² Only one party, David B. Popkin, who represented himself as an individual, failed to join the settlement. He did not oppose.

THE SETTLEMENT

The unopposed settlement agreement in this case represents the cooperative efforts of all participants. The Commission correctly concluded that the settlement process and the proceedings before the Commission provided all parties adequate opportunities to conduct meaningful discussions and to evaluate and comment on the agreement. PRC Op. MC2002-1, at 12. Furthermore, in substantially recommending the Stipulation and Agreement, the Commission has carried out its responsibilities under the Act to assess the settlement proposal, and to consider the particular circumstances of this case. The Commission independently reviewed the evidentiary record and concluded that it provides substantial evidence supporting the Commission's recommendations for Confirm. *Id.* at 13.

Our authority under the Act to approve the Commission's recommendations entitles us to rely on its findings and reasoning, as well as the entire record before us and the Commission. On the basis of our own review, we also find that the results in this proceeding are supported by the stipulations embodied in the settlement agreement. The agreement adopts the record filed by the Postal Service as providing substantial evidence for establishing the fees and classification changes embodied in the settlement agreement.

With respect to the attribution of Confirm costs, the Commission found that its conclusion regarding evidentiary support was made possible because, under the settlement agreement, the analysis embodied in the Postal Service's testimony has no status as precedent. *Id.* In particular, the Commission noted that the treatment of certain ongoing expenses and sunk costs might be potentially controversial. *Id.* In this regard, we need not condition our findings on the settlement agreement's non-binding effect, although we acknowledge that status. We find that the Postal Service's approach to cost allocation is reasonable and persuasive, and that the evidence fully supports the fees recommended by the Commission.

We approve the recommended fees. They mirror those contained in the Stipulation and Agreement, which are identical to the fees initially requested by the Postal Service. As recommended by the Commission, the Confirm cost coverage for FY 2003 is 182%.

CLASSIFICATION CHANGE

The Commission departed from the Stipulation and Agreement with respect to certain elements of the description of Confirm proposed for inclusion in the DMCS. As the Commission's Opinion explains, in a Notice of Inquiry issued during the proceedings (NOI No. 1), it expressed reservations concerning the language originally proposed in the Postal Service's Request, and it invited comments on alternative language. *Id.* at 13-15. In its response, the Postal Service critiqued the Commission's alternative, and provided clarification of certain of Confirm's operational elements. Responding to the Commission's views, furthermore, the settlement parties undertook to refine the Postal Service's original proposal in light of the Commission's and the Postal Service's views and Confirm's operations. The refinements were incorporated into the Stipulation and Agreement.

The Commission found that some of the settlement changes merited adoption. It also found that the explanations offered by the Postal Service justified not adopting certain of the Commission's suggested alternatives. The Commission, however, modified the language proposed in the settlement, and retained elements of its alternatives in certain respects. In section 991.21 of the DMCS, the Commission described Confirm as being available to authorized subscribers for automation compatible mail entered under several specified classifications. These included First-Class Mail, including Priority, Standard Mail, Periodicals, and Package Services. The Postal Service in the Stipulation and Agreement had proposed eliminating specific reference to mail classes, but the Commission found this approach unacceptably vague.

We believe that the Commission's reasoning logically explains the Commission's modification; however, we would have preferred adherence to the language proposed in the Stipulation and Agreement. In this regard, we believe that some of the classification language recommended by the Commission risks confusing the character of Confirm as a service. Confirm is not linked to qualifying mail pieces; rather it is available to qualifying subscribers. By referring to "qualifying mail" in recommended DMCS sections 991.11 and 991.32, and by specifying in section 991.21 that Confirm is available for mail entered under particular classification schedules, the Commission's recommended language suggests a direct linkage to individual mailpieces. In fact, while there was testimony that some barcoded pieces in Package Services might be scanned under Confirm, the service as currently offered is not intended to track the processing

of parcels, which dominate the Package Services categories. Nor is there a requirement that any *particular* mail submitted by subscribers bear PLANET codes in order for the mailer to qualify for Confirm, as suggested in recommended section 991.32.³ Rather, as noted in section 991.31, the mailer must demonstrate the *capability* of producing such mailpieces.

Given the level of sophistication and understanding represented by current and likely future users of Confirm, we do not believe that these defects warrant reconsideration and change at this time, and we therefore approve the Commission's recommendations. The Postal Service, however, may suggest clarifying changes in a future proceeding.

Finally, we are pleased that the Commission did not modify proposed section 991.41 in the Stipulation and Agreement by attempting to list other special services with which Confirm might be combined. *Id.* at 18. In its Opinion, however, the Commission stated its continued preference for listing combinations of special services in the DMCS with each description of a classification or other special service. Except for special services that are prerequisites for using others, in our view, such combinations do not define a special service, or establish its legal parameters. Our primary concern, rather, is that maintaining special service combinations in the DMCS reduces the Postal Service's flexibility to change those combinations quickly, by making it necessary for the Postal Service to file a Request with the Commission for a change in the DMCS, each time a determination is made that a new combination would be in the interests of mail users. In this regard, we appreciate that in its Opinion the Commission has again expressed readiness to act promptly on the expected Requests to update the lists. As we stated in our Decision of December 5, 2000, in Docket No. R2000-1, however, we would prefer that the Commission delete these lists from the DMCS. Given the many important rate and classification changes that might require Commission review in these times of Postal Service transformation, we urge the Commission to eliminate, where legally permitted, the need to use resources on minor classification changes.

³ It seems clear, however, that a mailer would not subscribe unless it intended to mail or receive PLANET-coded pieces.

ESTIMATE OF ANTICIPATED REVENUE

The statute (39 U.S.C. § 3625(e)) requires that our Decision include an estimate of anticipated revenue. Those estimates were provided by Postal Service witness Kiefer (USPS-T-5), and relied upon by the Commission in reaching its decision in this proceeding. PRC Op. MC2002-1, at 10. The fees recommended by the Commission will produce \$9.2 million in the test year, FY 2003. *Id.* We fully support the Commission's findings.

ORDER

In accordance with the foregoing Decision of the Governors, the changes in postal fees and in mail classification attached hereto and incorporated herein are approved and ordered into effect. In accordance with Resolution 02-9 of the Board of Governors, dated August 5, 2002, the changes will take effect at 12:01 a.m. on September 22, 2002.

By The Governors:

A handwritten signature in black ink, appearing to read "Robert J. Linder", is written over a horizontal line.

Chairman

RESOLUTION OF THE BOARD OF GOVERNORS

OF THE

UNITED STATES POSTAL SERVICE

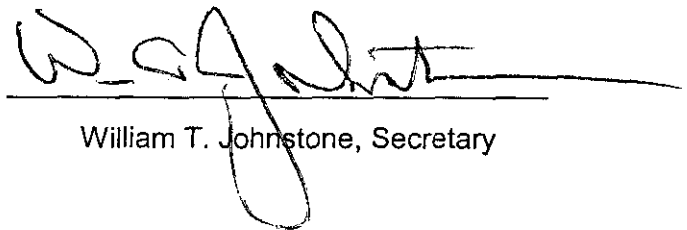
Resolution No. 02-9

Effective Date of New Confirm Classification

RESOLVED:

Pursuant to section 3625(f) of Title 39, United States Code, the Board of Governors determines that the classification and fees that were ordered to be placed into effect by the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission Approving Stipulation and Agreement for Confirm, adopted on August 5, 2002, shall become effective at 12:01 a.m. on September 22, 2002.

The foregoing Resolution was adopted by the Board of Governors on August 5, 2002.



William T. Johnstone, Secretary